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No. 82-740

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

SHEARN MOODY, JR.,
Petitioner,
v.
STATE OF ALABAMA EX REL.
THARPE FORRESSTER, COMMISSIONER OF
INSURANCE OF THE STATE OF ALABAMA
and
PROTECTIVE LIFE INSURANCE CO.,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE ON BEHALF OF THE CONSERVATIVE CAUCUS, INC.

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE BY THE CONSERVATIVE CAUCUS, INC. IN SUPPORT OF PETITIONER

The Conservative Caucus, Inc. hereby respectfully requests leave to file the attached brief amicus curiae in support of the petition for writ of certiorari in this case. Counsel for petitioner have consented to the filing of the brief. Counsel for respondents have refused consent.

Amicus is a non-profit organization founded in 1974 to advance various conservative policy objectives. With over four hundred thousand supporters, the Conservative Caucus is one of the largest conservatively-oriented "grass roots" lobbying organizations in the country.

Amicus is currently engaged in a major project to develop and promote legislative proposals for reform of the federal judicial system. This project focuses, *inter alia*, on issues relating to the relationship between federal and state courts. Amicus is thus keenly interested in the issues presented by the petition. Although Amicus believes that the powers of the federal courts should be curtailed in certain respects, Amicus is also committed to the proposition that state courts are without power to foreclose a federal litigant's right of access to federal court.

Accordingly, Amicus respectfully requests that it be permitted to state its views on the merits of the petition. The principal argument that we wish to make, and which is set forth in the attached brief, is that federal courts must not be deprived of authority to make their own determinations about the appropriate exercise of their jurisdiction. The decision below, sustaining a state court injunction against judicial proceedings in a federal court, purports to do precisely that.

Respectfully submitted,

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BRIEF OF AMICUS CURIAE THE CONSERVATIVE CAUCUS, INC. IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE

The interest of amicus in this case is set forth in the foregoing motion.

INTRODUCTION AND STATEMENT

This case concerns the authority of a state court to preemptively oust federal courts of jurisdiction to adjudicate federal claims. Although this Court has disapproved the practice on several occasions, *see Donovan v. City of Dallas*, 377 U.S. 408 (1964), *General Atomic Co. v.*

Felter, 434 U.S. 12 (1977), the Alabama Supreme Court has prohibited petitioner from bringing a purely in personam suit for damages in the federal courts of Texas. Rather than permit the federal courts to determine in the first instance whether they will proceed with petitioner's claims, the Alabama Supreme Court has held that petitioner may be enjoined, upon pain of contempt, from even initiating his federal court suit. The sole justification offered for this holding is that the unfiled federal action is "inextricably connected with" a pending in rem proceeding in Alabama state court and that the action "would be an interference" with this proceeding. Pet. App. A2.

The petition arises out of a receivership proceeding brought against a life insurance company in the Circuit Court for Jefferson County, Alabama (the "receivership court"). Petitioner is the principal stockholder and former president of this company. In 1975, after placing the company in receivership and ordering the liquidation of its assets, the receivership court enjoined petitioner from initiating any legal proceedings concerning or affecting the receivership without first obtaining the court's permission. The injunction purported to bar suits in any forum, state or federal, whether filed in petitioner's name or on behalf of another party. Pet. at 5, 6.

Having run afoul of this injunction on past occasions,[1] petitioner sought permission from the receivership court

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[1] In 1975 the receivership court found petitioner in violation of this injunction for aiding a policy holder of the insurance company in his suit against the receiver. *Moody v. State ex rel. Payne*, 335 So. 2d 1116 (Ala.), *cert. denied*, 439 U.S. 910 (1978). Petitioner was subsequently sued for damages on the basis of this finding and a judgment against petitioner was affirmed by the Fifth Circuit. *Sumrall v. Moody*, 620 F.2d 548 (5th Cir. 1980), *on rehearing*, 632 F.2d 1351 (5th Cir. 1980), *cert. denied sub nom. Moody v. Forresster*, 450 U.S. 1026 (1981). In 1976, the receivership court denied petitioner permission to file a separate civil action in federal court. This denial was affirmed by the Alabama Supreme Court. *Moody v. State ex rel. Payne*, 351 So. 2d 552 (Ala. 1977), *cert. denied*, 435 U.S. 964 (1978).

to file the federal suit at issue in this case. The proposed complaint states causes of action under the Constitution and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985, the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1964(c). Named as defendants are nine individuals, one corporate defendant, and the state of Texas. The proposed action requests no relief other than damages against the defendants individually, and names neither the current receiver nor the receivership court as defendants. Pet. App. C12.

The receivership court denied permission to file the federal complaint, finding that petitioner's claims "would interfere with, delay, and seek to stop [the receivership] proceedings." Pet. App. B2. On petition for a writ of mandamus, the Alabama Supreme Court affirmed this decision. The court below held that:

> the proposed civil action for damages is inextricably connected with the . . . receivership. To permit the suit would be an interference with the receivership and therefore mandamus is denied. Pet. App. A2.

This usurpation of federal judicial authority, depriving petitioner of his right to prosecute federal claims in the federal courts, should not be tolerated. At issue here is not the ultimate choice of forum—state court or federal court—for the adjudication of petitioner's claims. Rather, the issue is whether a state court may make that choice unilaterally, and then enforce its decision by means of an injunction barring federal court consideration of the question. Amicus submits that it is for the federal courts to decide whether they have jurisdiction to adjudicate petitioner's claims and, if so, whether principles of res judicata, abstention, and other prudential doctrines will permit such adjudication. That power may not be preempted at the whim of a state receivership court.

This brief is divided into two sections. The first demonstrates that the decision of the Alabama Supreme Court is in direct conflict with this Court's decision in *Donovan v. City of Dallas*, 377 U.S. 408 (1964), and related cases. *Donovan* establishes that state courts are without power to enjoin federal court suits, subject to one very narrow exception: a state court having in rem jurisdiction may enjoin a subsequently filed federal court action based on in rem jurisdiction over the same res. As we show, the reasons for this exception to the anti-injunction rule make clear that it may not be broadened, as the Alabama Supreme Court has attempted, to cover not only in rem and quasi in rem suits, but also purely in personam suits that might cause an "interference" with an in rem proceeding in state court.

Second, we demonstrate that, if permitted to stand, the decision of the Alabama Supreme Court will have far-reaching and important consequences. The issue presented here is not confined to petitioner; the state court authority asserted by the Alabama Supreme Court is codified in the statutes of at least twenty-five states. Pet. App. D. Moreover, the unfairness caused by this assertion of judicial power is severe. The effect of a state court injunction against the bringing of a federal court suit is not merely the preclusion of a federal forum. In many cases, the effect is the preclusion of the plaintiff's claims altogether, whether in state or federal court.

Amicus urges that this Court grant the petition and reverse the decision of the Alabama Supreme Court. We note that in a recent and similar case this Court summarily vacated a state court injunction against proceedings in a federal court. *General Atomic Co. v. Felter*, 434 U.S. 12 (1977). Summary disposition may also be appropriate here.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE ALABAMA SUPREME COURT IS DIRECTLY CONTRARY TO THIS COURT'S DECISION IN *DONOVAN* v. *CITY OF DALLAS*.

The decisions of this Court make clear that a state court is without power to enjoin a federal court suit of the type at issue here—a purely in personam action for damages. Although the Alabama Supreme Court purported to justify the injunction on grounds that petitioner's federal suit would cause an "interference" with the pending state receivership proceeding, there simply is no such exception to the anti-injunction rule. The decision below is therefore directly at odds with this Court's precedents.

a. State Courts Are Without Power to Enjoin In Personam Federal Court Actions.

The anti-injunction rule was established in *Donovan v. City of Dallas, supra*, and several related cases. *General Atomic Co. v. Felter, supra*; *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939). In *Donovan* a plaintiff class brought an action in Texas state court challenging the issuance of revenue bonds for construction of a municipal airport that it opposed. After final judgment was entered in favor of defendants, a second suit was filed in federal court alleging essentially the same claims on behalf of essentially the same plaintiff class. The state court enjoined further prosecution of the federal court suit and subsequently adjudicated plaintiffs' counsel and several of the individual plaintiffs in contempt.

This Court vacated both the state court injunction and contempt judgments, squarely holding that "*state courts are completely without power to restrain federal court proceedings in in personam actions . . .*" 377 U.S. at 413 (emphasis added). The Court stated that plaintiffs in the second suit had a "right" to bring their action in federal

court, "a right which is theirs by reason of congressional enactments passed pursuant to congressional policy." *Id.* at 412. Although recognizing a long-settled exception for certain federal court suits in rem or quasi in rem, *ibid.*, the Court held that "where the judgment sought is strictly in personam, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation . . . ." *Ibid.*, citing *Princess Lida v. Thompson*, *supra*, 305 U.S. at 466 (internal quotes omitted).

The anti-injunction rule of *Donovan* does not mean, of course, that federal claimants may always have their claims finally adjudicated in a federal court. Well-recognized doctrines, such as res judicata and collateral estoppel, establish that federal courts in many cases should refrain from deciding claims relating to proceedings in another court. What *Donovan* does mean, however, is that the decision whether to exercise federal jurisdiction is to be made by the federal courts in the first instance. Thus, the anti-injunction rule applies even when the second action is completely duplicative of the first, involving the exact same parties, claims, and defenses. As the Court in *Donovan* noted, the federal courts are fully capable of applying principles of res judicata and collateral estoppel to bar relitigation of claims and issues that have been finally decided in another forum. 377 U.S. at 412.

Similarly, the anti-injunction rule applies even though the second action may be characterized as "vexatious and harassing litigation," *General Atomic Co. v. Felter*, *supra*, 434 U.S. at 17, filed solely to thwart enforcement of the prior court's valid judgment. An injunction is barred in such cases not because they should be permitted to proceed, but because the federal district courts, once again, are competent to stop them where necessary or appropriate. As this Court stated in the *General Atomic* case, the "[f]ederal courts are fully capable of preventing their misuse for purposes of harassment." 434 U.S. at 19.

The *Donovan* rule is thus predicated on the dual notions that federal courts are competent to decide whether to exercise their jurisdiction in a particular case and that they possess the devices necessary to effectuate those decisions. As stated, these include the finality doctrines of res judicata and collateral estoppel, as well as the inherent authority of the federal courts to prevent the abuse of their process. Similar devices, not explicitly mentioned in *Donovan*, are the various federal doctrines of abstention, *see, e.g., Hawks v. Hamill*, 288 U.S. 52 (1933), *Alabama Public Service Comm'n v. Southern Ry. Co.*, 341 U.S. 341 (1951), *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), and principles of forum nonconveniens, *see, e.g., Norwood v. Kirkpatrick*, 349 U.S. 29 (1955), *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). These devices are adequate to mediate most conflicts between state and federal courts engaged in parallel or overlapping judicial proceedings. More importantly, they do so without resort to the extreme measure of an injunction against ongoing or prospective litigation.

The application of the *Donovan* rule to the instant case is clear. Petitioner's proposed federal suit is a purely in personam action seeking damages against nine individuals, one corporate defendant, and the state of Texas pursuant to an express waiver of sovereign immunity. Pet. App. C2, 3. Although the Alabama Supreme Court asserts that this action is an "inteference" with the Alabama State receivership proceeding and is "inextricably connected" to that proceeding, these findings provide no basis for the ousting of federal court jurisdiction. Whether or not petitioner may proceed with his federal claims in federal court is for the federal courts themselves to decide.

b. The In Rem Exception to the Holding in *Donovan v. City of Dallas* May Not Be Extended to Any Federal Action Causing "Interference" With or "Inextricably Connected With" a Prior State Action.

Although *Donovan* bars all injunctions against in personam suits in federal court, it also reaffirms a limited

exception to the anti-injunction rule for certain claims based on in rem jurisdiction. The decision below is an attempt to extend this exception to any suit, irrespective of its jurisdictional basis, that somehow threatens to "interfere" with a prior state court proceeding or is "inextricably connected" with such a proceeding. This radical extension of the in rem exception should not be permitted.[2]

At the outset, it is important to note that the in rem exception to *Donovan*'s anti-injunction rule has been narrowly construed. The exception applies only where *both* the state and federal court proceedings are in rem and jurisdiction in each court is founded on custody over the same res. *Princess Lida v. Thompson*, *supra*, 305 U.S. at 466.[3] It does not apply simply because one of the proceedings is in rem and the second suit, although in per-

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[2] At issue here in not whether petitioner's proposed federal court suit would be a proceeding in rem. It is clear beyond question that the federal proceeding would be based on jurisdiction over the defendants personally, not jurisdiction over corporate asset[illegible] other property taken from the custody of the Alabama receivership court. A case is in rem or quasi in rem only when (1) the basis for jurisdiction is the court's custody over property within its territory, and (2) the effect of any judgment in the plaintiff's favor would be limited to such property. *Shaffer v. Heitner*, 433 U.S. 186, 199 (1977). *See Restatement, Judgments*, 5-9. Petitioner's suit seeks money damages from each of the defendants. Pet. App. C12. Such a personal obligation, not limited to any res within the Texas federal court's control, is inherently in personam. *Shaffer v. Heitner*, *supra*, 433 U.S. at 199 & n. 17. Indeed, in the absence of the Alabama courts' injunction, petitioner's federal suit could proceed if the "property" in the possession of the Alabama receivership court did not exist at all.

[3] *Princess Lida v. Thompson*, *supra*, was such a case. There a federal district court purported to exercise in rem jurisdiction over trust assets which were the subject of a prior in rem proceeding in state court. This Court held that "if the two suits are in rem . . . so that the court, or its officers, has possession or must have control of the property which is the subject of the litigation . . . , the jurisdiction of the one court must yield to that of the other." 305 U.S. at 466.

sonam, is closely related to the in rem proceeding. Indeed, the in rem exception is inapplicable even where the second action seeks an adjudication of rights in the property on which the first court's in rem jurisdiction is based. *See United States v. Klein*, 303 U.S. 276 (1938); *Markham v. Allen*, 326 U.S. 490 (1946).

The reason for the in rem exception—and the reason it has been narrowly construed—derives from traditional, and somewhat metaphysical, notions about judicial power over property. The peculiar characteristic of jurisdiction in rem is that it is inherently *exclusive* jurisdiction that cannot be shared with another court. Although two courts may exercise concurrent jurisdiction over the same person in lawsuits based on in personam jurisdiction—that is, there is no jurisdictional bar to their doing so—two courts may *not* exercise simultaneous in rem jurisdiction over the same res. *Princess Lida v. Thompson*, *supra*, 305 U.S. at 466; *Mandeville v. Canterbury*, 318 U.S. 47 (1943); *Toucey v. New York Life Insurance Co.*, 314 U.S. 118 (1941); *Kline v. Burke Construction Co.*, 260 U.S. 226 (1922).

This is so because property may "not be subject to two jurisdictions at the same time." *Hagen v. Lucas*, 10 Pet. (35 U.S.) 400, 403 (1836). *See also Pennsylvania Gen. Cas. Co. v. Commonwealth of Pennsylvania ex rel. Schnader*, 294 U.S. 189 (1935); *Harkin v. Brundage*, 276 U.S. 36 (1928). Jurisdiction over property is premised on a court's exclusive custody and control over such property. *Hagen v. Lucas*, *supra*. It follows that the assertion by one court of in rem jurisdiction has the effect of divesting all other courts of authority over the res. "If a court of competent jurisdiction, Federal or state, has . . . obtained jurisdiction over [a res], such property is withdrawn from the jurisdiction of the courts of the other authority as effectually as if the property had been entirely removed to the territory of another sovereignty." *Palmer v. State of Texas*, 212 U.S. 118, 125 (1909).

The exclusive nature of in rem jurisdiction makes the in rem exception necessary because, under this traditional view of judicial authority, there simply is no less disruptive way to mediate conflicts between state and federal courts asserting jurisdiction over the same property. As discussed earlier, conflicts between state and federal courts in suits in personam can be effectively mediated through the federal courts' application of principles of res judicata, federal abstention, and similar prudential doctrines of restraint. In the context of overlapping in rem proceedings, by contrast, the absence of concurrent jurisdiction in both the state and federal courts renders these same devices ineffective. Because the very pendency of an in rem case is thought to oust all other courts of jurisdiction, injunctions against judicial proceedings are viewed as the only way to prevent an intractable tug-of-war between the courts of two sovereigns.

The in rem exception thus responds narrowly to a problem that is unique to jurisdiction predicated on custody or control over property. It does not respond more generally to a concern about one court's "interference" with another court's proceedings. On the contrary, in personam actions subject to the *Donovan* rule may be highly disruptive of parallel in rem proceedings in state court. Indeed, in *Donovan* itself the subsequent federal action operated as a complete bar to enforcement of the state court's prior judgment and decree.[4] It is hard to conceive of a federal in personam suit that could cause greater "interference" with a related state proceeding. If the facts in *Donovan* did not warrant a broadening of

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[4] A state statute prohibited issuance of the contested revenue bonds so long as they were subject to litigation in any court. 377 U.S. at 409 & n. 3. Thus, the very commencement of the federal court in personam suit precluded enforcement of the state court's judgment in favor of the city.

the in rem exception, then the facts before the Alabama Supreme Court in this case certainly do not.

Moreover, more recent developments in the area of in rem jurisdiction suggest that, if anything, *Donovan*'s exception for in rem proceedings is too broad, not too narrow. In *Shaffer v. Heitner*, *supra*, this Court held that assertions of in rem and quasi in rem jurisdiction must satisfy the same due process standards of "minimum contacts" that have applied to jurisdiction in personam since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Recognizing that jurisdiction over property is, in reality, jurisdiction over the interests of *persons* in property, 433 U.S. at 207, the Court concluded that jurisdiction in rem and jurisdiction in personam are fundamentally the same.

This holding obviously draws into question the traditional view of jurisdiction over property as inherently exclusive jurisdiction, depriving all other courts of authority over the res. Since jurisdiction in rem is in substance jurisdiction over persons, it follows that, as in the case of in personam suits, two courts may indeed have concurrent in rem jurisdiction, thus obviating the need for injunctions against litigation in such cases. A functional analysis of the in rem exception of *Donovan* therefore counsels more in favor of limiting that exception, rather than extending it to all suits that, irrespective of their jurisdictional basis, threaten "interference" with another in rem proceeding.

Accordingly, there is no basis whatever for broadening the in rem exception to cover suits that are not strictly in rem. Where, as here, the federal court action is in personam, the availability of concurrent jurisdiction will enable the federal courts, in the first instance, to decide whether to proceed.

II. THE DECISION BELOW HAS IMPORTANT CONSEQUENCES BEYOND THE CIRCUMSTANCES OF PETITIONER'S CASE.

The decision below, purporting to divest federal courts of jurisdiction to decide in personam federal claims, has far-reaching consequences for the relations between state and federal courts and among courts of different states. Moreover, the extraordinary judicial power asserted in this case will cause substantial prejudice to the rights of persons, like petitioner, who are swept under the net of injunctions against judicial proceedings.

At the outset, it should be pointed out that petitioner's predicament is in no sense unique. In Texas alone, some fifty state-court receivership proceedings involving insurance companies have been instituted since 1970. Pet. App. E. Thirty-two of these cases, in addition to petitioner's, have resulted in permanent injunctions barring all litigation in other courts. *Ibid.* Many other states, through statutes regulating domestic and ancillary insurance companies, lay claim to the same broad injunctive authority. At least twenty-five states purport to empower their receivership courts to issue any injunctions or orders that are deemed necessary to "prevent interference" with the receivership proceeding, specifically including injunctions against the commencement or prosecution of "any actions." Pet. App. D.[8]

Moreover, the unfairness caused by these extravagant assertions of state judicial power can be severe. If the

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[8] Alabama's injunction statute, Alabama Code Tit. 27 § 27-32-5(b) (1977), is typical of these provisions. It states that "the court may, at any time during a proceeding under this chapter, issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens or the making of any levy against the insurer or against its assets or any part thereof."

barred claim is one that the enjoining court may not adjudicate, the effect of the injunction is not merely to deprive the plaintiff of his choice of forum, but to deprive him of his claim altogether. This can happen in a number of ways.

First, the enjoined claim may be one over which Congress has given the federal courts exclusive jurisdiction. If the claimant is barred from suing in federal court and the enjoining state court is without jurisdiction to proceed, the federal cause of action is precluded. Indeed, this is precisely what has happened to petitioner in this case. His proposed federal complaint states claims under the Racketeering Influenced and Corrupt Organization Act, 18 U.S.C. § 1964, and the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, both of which vest exclusive jurisdiction in the federal district courts. 18 U.S.C. § 1964(a) and (c); 15 U.S.C. § 15. See *Freeman v. Bee Machine Co.*, 319 U.S. 448, 451 n. 6 (1943) (Sherman Act). Under the receivership court's injunction, as affirmed by the Alabama Supreme Court, petitioner is deprived of a forum to prosecute these claims.

Second, the enjoined claim, whether state or federal, may arise as a counterclaim to a suit filed in another forum. If the enjoined claim is regarded as a "compulsory" counterclaim under Rule 13(a), Federal Rules of Civil Procedure, it is likely to be lost forever.[6] Any subsequent suit on the same cause of action will be barred

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[6] Rule 13(a) recognizes only two exceptions to the compulsory counterclaim rule, neither of which would seem to apply to preserve the claim of a party subject to an injunction against litigation. The first exception allows a defendant to forego a counterclaim if such claim "was the subject of another pending action." Rule 13(a)(1). The second exception applies where the district court has not obtained personal jurisdiction over the defendant. Rule 13(a)(2).

by principles of res judicata. *See American Mills Co. v. American Surety Co.*, 260 U.S. 360 (1922).[7]

Finally, the enjoined claim may be one over which the enjoining state court has subject matter jurisdiction, but not personal jurisdiction. Because the enjoined party is barred from suing in another court having such jurisdiction, the effect of the injunction is to work a forfeiture of an otherwise valid cause of action.

Apart from these extreme consequences of injunctions against proceedings in other courts, there is the additional unfairness of depriving a plaintiff of his right to choose a federal forum, a "right that . . . was granted by Congress and cannot be taken away by the State." *Donovan v. City of Dallas, supra*, 377 U.S. at 413. Although this right is not absolute, neither should it be overridden without substantial justification. We note that federal bankruptcy courts, whose functions are similar to those of a state receivership court,[8] do not purport to have the sweeping injunctive powers asserted by the Alabama Supreme Court. The stay provisions of the Bankruptcy Act, although permitting the stay of certain judicial proceedings, 11 U.S.C. 362(a)(1)-(8), strictly limit this injunctive authority to creditors' claims *against* the bankrupt. They do not purport to authorize the stay of

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[7] It is worth noting that injunctions, like the one at issue here, do not typically inhibit suits *against* litigants like petitioner. The fact that they may be sued elsewhere, but are forced to forego all counterclaims, obviously puts them at a severe disadvantage.

[8] Receivership proceedings involving insurance companies take place in state court, rather than in federal bankruptcy court, because of the prohibition against federal regulation of insurance companies contained in the McCarran-Ferguson Act, 15 U.S.C. 101 *et seq.* The federal Bankruptcy Act, as amended, contains an express exclusion for domestic insurance companies. 11 U.S.C. 109(b)(2).

lawsuits, such as petitioner's, that are brought against parties other than the insolvent corporation.[9]

Finally, the injunction against federal court litigation is particularly offensive in this case because the Alabama receivership court—the court to which petitioner is forced to bring his claim—is itself the subject of allegations in petitioner's complaint. Pet. App. C ¶¶ 21, 38, 39, 42. Whatever the merits of these allegations, it is apparent that the Alabama receivership court is not the appropriate forum for their adjudication. Petitioner, in other words, is not only denied his choice of forum by the decision below, but he is forced to litigate his claims in the one forum that is, under the circumstances, the least hospitable of all conceivable choices. Amicus submits that the injunction against petitioner therefore constitutes a serious abuse of state judicial power.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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[9] *See, e.g., Ideal Roofing & Sheet Metal Works Inc.*, 9 B.R. 2 (Fla. 1980) (denying stay against state court suit filed by the bankrupt); *In re Cloud No. 9, Ltd.*, 3 B.R. 202 (N.M. 1980) (denying stay of creditor suit against nonbankrupt third party).